IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

WP(C).No. 35277 of 2005(Y)

PETITIONERS:

1. **MR.BENNY, S/O.M.C.MARKOSE, MANJJAKKADAMBIL, PULPPARA, KOOTHATTUKULAM, ERNAKULAM DISTRICT.**
2. **MR.BENS, S/O.M.C.MARKOSE, MANJJAKKADAMBIL, THIRUMARADY, KOOTHATTUKULAM, ERNAKULAM DISTRICT.**
3. **MRS.JIJI BENNY, W/O.BENNY, MANJJAKKADAMBIL, PULPPARA KOOTHATTUKULAM, ERNAKULAM DISTRICT.**
4. **MR.BIBIN, S/O.BENNY, MANJJIKKADAMBIL, PULPPARA, KOOTHATTUKULAM, ERNAKULAM DISTRICT.**

BY ADV. SRI. ALIAS M. CHERIAN

RESPONDENTS:

1. **THE TAHSILDAR, TALUK OFFICE, MUVATTUPUZHA.**
2. **THE SALES TAX ASSISTANT COMMISSIONER, SPECIAL CIRCLE (PRODUCE), MATTANCHERRY, KOCHI, ERNAKULAM DISTRICT.**
3. **THE STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI. K.P. PRADEEP.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 35277/2005(Y)

A P P E N D I X

PETITIONER'S EXHIBITS:

EXT. P1	**:**	**SALE DEED NO. 709 OF 1990 DATED 22.3.1990.**
EXT. P2	**:**	**SALE DEED NO. 710 OF 1990 DATED 21.3.1990.**
EXT. P3	**:**	**SALE DEED NO. 711 OF 1990 DATED 22.3.1990.**
EXT. P4	**:**	**SALE DEED NO. 692 OF 1990 DATED 21.3.1990.**
EXT. P5	**:**	**SALE DEED NO. 776 OF 1990 DATED 27.3.1990.**
EXT. P6	**:**	**NOTICE NO. B4/6633 DTD. 7.10.05 GIVEN TO 1ST PETITIONER.**
EXT. P7	**:**	**NOTICE NO. B4/6633 DTD. 7.10.05 GIVEN TO 2ND PETITIONER.**
EXT. P8	**:**	**NOTICE NO. B4/6633 DTD. 7.10.05 GIVEN TO 3RD PETITIONER.**
EXT. P9	**:**	**NOTICE NO. B4/6633 DTD. 7.10.05 GIVEN TO 4TH PETITIONER.**
EXT. P10	**:**	**OBJECTION DATED 22.10.05 GIVEN BY 1ST PETITIONER.**
EXT. P11	**:**	**OBJECTION DATED 22.10.05 GIVEN BY 2ND PETITIONER.**
EXT. P12	**:**	**OBJECTION DATED 22.10.05 GIVEN BY 3RD PETITIONER.**
EXT. P13	**:**	**OBJECTION DATED 22.10.05 GIVEN BY 4TH PETITIONER.**
EXT. P14	**:**	**ORDER NO. B4/6633/00 DTD. 2.11.05 PASSED BY 1ST RESPONDENT.**
EXT. P15	**:**	**ASSESSMENT ORDERS FOR THE YEARS 1986-87, 87-88, 88-89, 90-91 AND 1992-93.**

// True Copy //

P.A. to Judge.

smp

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 35277 of 2005

Dated, this the 13th day of December, 2007

J U D G M E N T

Petitioners are challenging Ext.P14 order whereunder the Tahsildar has declared the sale of property by defaulter in favour of close relatives, who are petitioners herein, is invalid under Section 26A of the KGST Act and Section 44(2) of the Revenue Recovery Act. It is seen that arrears of sales tax of above Rs.2 lakhs, was due from two partners of the firm for the assessment years 1986-87 to 1992-93. In March, 1990, the property was sold by one of the partners to the petitioners. However, petitioner's case is that RR notices were issued only after execution of sale deed in their favour and so much so, their property cannot be proceeded against. However, it is seen that liability for four years arose prior to the date of sale. Substantial liability is for the assessment year 1989-90, which amounts to above Rs.1 lakh without interest. Obviously, the liability towards sales tax was in arrears as on date of transfer and therefore, the transfer of property to close relatives is made only to insulate the property from recovery. Section 44(2) of the RR Act declares transfer of immovable property made by a defaulter after public revenue due on any land from him has fallen in arrears

with intent to defeat or delay the recovery of such arrears as invalid and the provision is only to safeguard interest of the State in recovery of arrears of tax. The transfer of property was obviously to defeat the recovery as otherwise there was no need to transfer the property to close relatives after incurring tax liability. Even though Section 26A came into force only on 01/04/1993, provision of Section 44(2) is sufficient to declare the transfer as invalid and having regard to the facts found by the Tahsildar that liability was incurred prior to the date of transfer, the transaction was obviously hit by Section 44(2) of the RR Act. This writ petition is, therefore, devoid of any merit and is dismissed.

2. However, since stay is granted by this Court and under Amnesty scheme Government granted 50-60% waiver of interest during 2004, I direct respondents to waive 50% of the interest, provided petitioners clear the arrears with balance 50% of the interest on or before 25/03/2008.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

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